

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9354 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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BHARATSINH BALUBHA ZALA

Versus

STATE OF GUJARAT

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Appearance:

MR ZUBIN F BHARDA for Petitioner

MS TALATI AGP for Respondent No. 1, 2, 3

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 18/02/2000

ORAL JUDGEMENT

Heard the learned advocates. The petitioner challenges the order of preventive detention dated 25th June, 1999, made by the Commissioner of Police, Rajkot, in exercise of powers conferred upon him by section 3 (1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act').

Along with the grounds of detention, the petitioner had been served with the grounds of detention. The grounds of detention refer to five prohibition cases registered against the petitioner during the months of September 1997 and May 1999. In each of the said offences, the petitioner was found to be in possession of the country liquor, and in last of the two offences registered in the year 1999, and in the offence registered on 22nd February, 1998, even the liquor-wash was recovered from the petitioner. At that time three cases were pending trial and last of the offences, registered on 21st May, 1999, was pending investigation. The petitioner, therefore, has been held to be a 'bootlegger' within the meaning of section 2 (b) of the Act, and his activities are also held to be prejudicial to the maintenance of the public order. It is contended that the impugned action has been taken long after the cause of action. This only suggests that there was no imminent danger of breach of public order on account of the petitioner's alleged activities and the power under the Act, therefore, could not have been exercised. The impugned order thus has been made without the authority of law and requires to be quashed and set aside. It is next contended that while making the order of detention, the Detaining Authority has relied upon the applications for bail made in all the aforesaid cases and the orders releasing the petitioner on bail. However, the application for bail made in respect of the offence registered on 4th September, 1997 and the order made thereon have not been supplied to the petitioner. Thus, the petitioner has not been supplied all the materials on which the Detaining Authority relied, thereby depriving the petitioner of his right to make an effective representation. The action of the respondents is, therefore, violative of Article 22 (5) of the Constitution of India, and the continued detention of the petitioner is vitiated. It is also urged that the Detaining Authority has not considered the possibility of moving the court for cancellation of bail and has instead resorted to the drastic action of preventive detention. The order is vitiated on that count also.

The statements made in the petition are not controverted. The delay in making the impugned order after the date of cause of action has not been explained in any manner. Nor it is controverted that all the materials relied upon by the Detaining Authority were not supplied to the petitioner as contended. In that view of the matter, it must be held that the continued detention

of the petitioner is not warranted.

Petition is, therefore, allowed. The impugned order of preventive detention is quashed and set aside. The petitioner, unless is required to be detained in some other cases, be released forthwith. Rule is made absolute accordingly. There shall be no order as to costs.

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JOSHI